Supreme Court, U.S.
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No.

In The

Supreme Court of the United States

October Term, 1997

CHARLES B. TAYLOR,

Petitioner,

vs.

ANNE ROONEY, in her capacity as Acting Principal, South Middle School,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Court of Appeals for the Second Circuit's opinion below conflicts with this Court's prior rulings on the applications of principles of tort law to causation issues in Section 1983 cases.

2. Whether the Court of Appeals for the Second Circuit's opinion below conflicts with this Court's prior rulings on causation in Section 1983 cases.

3. Whether the Court below misapplies its decision in *Jefferies v. Harlston*, 53 F.3d 9 (2nd Cir. 1997) in the instant case.

4. Whether the court below misapplied the standard of review of a denial of a motion for judgment as a matter of law.

PARTIES TO THE PROCEEDINGS

The party named in the caption, Ann Rooney, was the only party on appeal to the Court of Appeals for the Second Circuit. The action was dismissed against the other named defendants in the original action, Brentwood Union Free School District; Board of Education, Brentwood Union Free School District; Anthony Felicio, Ruth Rosenthal, Steven Coleman, Frank Cannon, Mary Reid, Owen McCaffrey, Jaime Suarez, in their capacities as members of the Board of Education, Brentwood Union Free School District; Frank Mauro, in his capacity as Superintendent of Schools, Brentwood Union Free School District; Dr. Rosemary Townley and Dr. Thomas Caramore, in their capacities as members of the Disciplinary Hearing Panel.

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Petitioner, Charles B. Taylor, respectfully requests that a writ of certiorari be issued to review the judgement of the United States Court of Appeals for the Second Circuit in this case.

OPINION BELOW

The opinion of the United States Court of Appeals for the Second Circuit is reported at 143 F.3d 679 (2nd Cir. 1998) (App. A). The judgment and order of the district court in *Taylor v. Brentwood Union Free School District, et al.*, is not published. (App. B).

STATEMENT OF JURISDICTION

The United States Court of Appeals for the Second Circuit entered its judgment in this case on May 6, 1998. (App. C). Petitioner sought rehearing and rehearing en banc. The petition for rehearing was denied on June 24, 1998 (App. D). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. Amend. XIV, § 1

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of laws.

42 U.S.C. § 1983: Civil Action for Deprivation of Rights

> Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, or the District of Columbia, subjects, or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

The fundamental question in this case is one of causation: whether Rooney, who was building principal in a school where Taylor, the petitioner taught, was the proximate cause of the constitutional deprivation of Taylor's equal protection rights under the Fourteenth Amendment, based on Taylor's race. To fully appreciate the significance of the issues presented by this case, it is essential to consider the operations of the New York State Education Law and the extensive factual record developed during the 21/2 week jury trial of this case.

A. Background of Taylor's Employment with the District Under the Supervision of Rooney.

In 1987, Rooney became the acting building principal for the South Middle School within the Brentwood Union Free School District, where Taylor, a Black male had been a technology teacher for over 15 years. (T-281: T-792). As

building principal, Rooney was responsible for overall operation of the school on a day to day basis.

Shortly after assuming the acting principal position, Rooney began to engage in a pattern of conduct of accusing Taylor of having either physically or verbally abused students. (E-63). Taylor was never afforded an opportunity to explain or respond to the allegations before Rooney would summarily conclude that he was guilty of whatever act or conduct of which he was accused by a disgruntled parent or a disruptive student. (E-63).

Although Rooney never formerly disciplined or reprimanded Taylor based on these allegations, she did issue him informal warnings which were not placed in his personnel file, copies of which were sent to Central Administration, the Superintendent of School's office and the Assistant Superintendent's office. (E-63; E-71; E-81; T-80-83). Taylor wrote rebuttals refuting every allegation against him. (E-67-70).

In December, 1991 Taylor was accosted in the classroom by a student with a history of violent behavior, as evidenced by numerous suspensions. (E-95; E-96; E-99-116).

In fact, two weeks before the incident with him, Taylor had sent Rooney a memo requesting that this student, Alex A. be removed for the technology class because his disruptive behavior was posing a safety threat in terms of the operation of the shop equipment. (E-94). There was no response from Rooney.

Also just prior to Taylor's incident with Alex, Alex had accosted and threatened another teacher, causing that teacher to notify Rooney that he feared for his safety based on Alex's

threats made to him and based on how he had to take necessary measures to restrain Alex. (T-246-248).

On the day in question, Alex was in Taylor's technology class and refused to follow a directive from Taylor. When Taylor approached him, Alex pulled him by the collar and took hold of Taylor's necktie and began choking him. Taylor, in an effort to attempt to breath and loosen Alex's hold on him, gently flipped Alex to the floor, at which time Alex's cousin grabbed him by the neck and pulled Alex off of Taylor. (T-1008-1045).

B. Rooney's Involvement in the Investigation of the Incident and in the Preferring of Charges Against Taylor.

Under the District's policy, Rooney, as the building principal had primary responsibility to report incidents of corporal punishment to the Superintendent of School's office in Central Administration. (T-610). As such Rooney was the person who made the initial determination as to whether there was an incident which warranted reporting it to Central Administration.

In the matter where Taylor was attacked by Alex, Rooney treated the incident from the very outset as grounds for building a case against Taylor: She had her assistant principal take photos of Alex's neck, to be used later. (T-1687).

Although there had been other incidents of students allegedly having sustained injuries in altercations with students, photos had never been taken before. (T-1722).

In a December 9, 1991 meeting with the teacher's union representative, Malossi, Rooney shared with him that she had pictures taken of the bruises on Alex's neck because she wanted

evidence of what had happened. (T-138-139). Malossi found this to be quite unusual, especially since Rooney had not witnessed the incident and did not know how the bruises may have gotten on Alex's neck. (T-139).

Rooney notified Central Administration of the incident and began to conduct her own investigation of the incident at the building level, deciding from which students she would take statements. (T [illegible]52). Rooney also determined which students Fascullo, from the Superintendent's Office would interview and she prepared those students for their meeting with Fasullo. (T-1640; 1644).

Rooney also testified that she had conversations and meetings with Fasullo from Central Administration, concerning the investigation of the Alex matter. (T-1654-16550).

Fasullo's testimony corroborates Rooney's indication of her involvement in the investigation of Taylor, and implicates her even further in terms of her providing him with copies of the student interviews she had conducted; providing him with the photos of Alex's bruises; and meeting with him concerning the investigation. (T-1852-1854). Fasullo also referred to an investigative memo he had where he made reference to having met with Rooney the day before he met with Taylor concerning the incident with Alex, at which time Rooney produced evidence which later was later used as the basis for considering the matter to be a case of corporal punishment, as opposed to it being a simple student control problem or a matter of self discipline. (E-236).

Fasullo also testified that Rooney had meetings with Central Administrator Welch concerning Taylor and the Alex incident. (T-1852). Former superintendent of Schools, Mauro, testified that Rooney attended meetings in Central

Administration concerning Taylor and the Alex matter. (T-539-540). Mauro also testified that among the factors considered in charging Taylor were the prior incidents, as reported by Rooney. (T-491-492).

As a result of Rooney's initial handling of the allegations against Taylor and the fact that she had previously warned him in an official memo that any future conduct where he had contact with a student would automatically be suspect and that he could touch a student for any reason, not even to protect himself or to protect another student, she played a critical role in the process which resulted in charges being preferred against him and a suspension being imposed. (E-81).

Both the superintendent and the Board of Education relied heavily on the investigation of Taylor as orchestrated by Rooney in the decision to prefer disciplinary charges against Taylor. Rooney was also a key witness at Taylor's disciplinary hearing. The hearing panel made specific reference to Rooney's involvement in its findings, stating that Taylor had previously been warned over the years by at least two principles, one of whom was Rooney. (E-167-168). Rooney also assisted in the preparation of the case before the disciplinary panel and in the preparation of the student witnesses.

Rooney was very much involved in the case before the disciplinary hearing panel. Much of what the panel considered either originated with Rooney or was reflective of her early and constant involvement in the case. In such a situation, it was not unreasonable for the panel to be influenced by the administrator's involvement and make a finding of guilt. Once the panel found Taylor guilty of the one charge concerning Alex, it recommended a penalty of a one year suspension without pay, which the Board of Education adopted.

C. Taylor's Equal Protection Claim

The rights of which Taylor claimed he was deprived are based on the violation of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution, with respect to Rooney's application and enforcement of the Brentwood Union Free School District's corporal punishment policy, which lead to the preferring of charges against him and to his suspension for one year without pay.

Rooney was the precipitating force in the process, in that she deemed the incident to be a corporal punishment not a self defense matter and reported it to Central Administration. Rooney had previously engaged in a pattern of writing Taylor up based on unfounded allegations by disgruntled parents or recalcitrant students.

In comparison to other white teachers who were also supervised by Rooney, and who actually admitted verbal or physical abuse of students, Taylor was the only teacher ever suspended for a year without pay, based on an incident which was actually self defense. Following a 21/2 week jury trial, the jury returned a verdict in Taylor's favor, against Rooney, finding that she had violated his equal protection rights, by having treated him differently than similarly situated white teachers.

D. The Proceedings Below

Rooney appealed the money judgment entered against her based on the jury's verdict to the Second Circuit. The Second Circuit, stating that *Jeffries v. Harlston*, 52 F.3d 9 (2nd Cir. 1997) controlled, determined as a matter of law, that Rooney was not the proximate cause of Taylor's injury. The court below denied Taylor's petition for a rehearing.

REASONS FOR GRANTING THE WRIT

I.

THE PETITION SHOULD BE GRANTED BECAUSE THE OPINION BELOW CONFLICTS WITH THIS COURT'S RULINGS ON THE APPLICATION OF TORT LAW TO SECTION 1983 CASES.

Charles B. Taylor's petition for writ of certiorari should be granted because the opinion below conflicts with this Court's important prior rulings on the requirement of causation in Section 1983 cases. In setting forth the requisite element of causation, this court has mad it patently clear that principles of causation borrowed from tort law are relevant in civil rights actions brought under Section 1983. *Malley v. Briggs*, 475 U.S. 335, 344 n.7, 106 S. Ct. 1092, 1098 n.7, 89 L. Ed. 2d 271 (1986); *Monroe v. Pape*, 365 U.S. 167, 1887, S. Ct. 373, 384, 5 L. Ed. 2d 492 (1961). *See also Warner v. Orange County Dept. of Probation*, 115 F.3d 1068, 1071 (2nd Cir. 1997)

In *Malley, supra*, this Court reasoned, in applying the principles of causation from tort law that, tort defendants, including those sued under § 1983 are "responsible for the natural consequences of (their) actions." *supra*, 475 U.S. at 344, n.7, 106 S. Ct. at 1098, n.7, *quoting Monroe*, 365 U.S. at 187, 81 S. Ct. at 484.

This rationale has been applied to cases in the First and Second Circuits. In *Springer v. Seamen*, 821 F.2d 871 (1st Cir. 1987), the court held that an investigation and termination decision of a Black postal worker were not sufficiently independent of the individual defendants' discriminatory actions as to constitute superseding causes, *id.* 879. The First Circuit adopted the Ninth Circuit's proximate cause standard

in a Section 1983 case, as articulated in *Johnson v. Duffy*, 588 F.2d 740, 743-744 (9th Cir. 1978) as follows:

> A person "subjects" another to the deprivation of a constitutional right, within the meaning of section 1983, if he does an affirmative act, participates in another's affirmative act, or omits to perform an affirmative act which he is legally required to do which causes the deprivation of which the complaint is made. (Citation omitted). Moreover, personal participation is not the only predicate for section 1983 liability. Anyone who "causes" any citizen to be subjected to a constitutional deprivation, is also liable. The causal connection can be established not only by some kind of direct personal participation in the deprivation, but also by setting in motion a series of acts by others which the actor knows or reasonably should know would cause others to inflict the constitutional injury.

Applying this reasoning to *Springer, supra*, the Ninth Circuit concluded that where the plaintiff alleges that the defendant participated directly in the investigation and there exist questions of the personal involvement of the defendants, there are issues of fact for the jury. *Id.* 879. The Ninth Circuit further emphasized that the investigation was undertaken as a result of the individual's actions, the racially discriminatory character of which is a factual question for the jury. *Id.* 879.

The fact pattern in *Springer, supra*, is very similar to the fact pattern in the instant case: In *Springer, supra*, a Black, male postal worker was investigated and ultimately terminated based on a letter of complaint from white defendants. Springer alleged improprieties in the investigation and in the decision to terminate him, which the Ninth Circuit viewed as raising

issues of fact appropriate for determination by a jury and not a court on the issue of proximate cause.

Citing W. Prosser & W. Keeton, Prosser and Keeton on Torts 320 (5th ed. 1984), the Ninth Circuit in *Springer, supra*, noted that the question of proximate causation is sometimes for the jury, not the court, especially when it comes to the "substantial factor" determination. The issue of superseding cause and shifting responsibility was properly decided by the jury: The application of the legal cause standard to a particular case is a function ordinarily of the fact finder . . . if reasonable persons might differ, the legal cause issue is determined by the fact finder. *LeBoeuf v. Ramsey*, 503 F. Supp. 747, 758 (D. Mass. 1980), *rev'd in part on other grounds sub nom., Costa v. Markey*, 677 F.2d 158 (1st. Cir. 1982)

The court in *Springer, supra*, further rejected the argument that the investigation of Springer was independent and therefore constituted an intervening cause sufficient to supersede the individual defendants' actions. *Id.* p. 877. Citing the Restatement, the court in *Springer, supra*, at 877, stated that if

> the reasonable foreseeability of its being done . . . is a factor in determining whether the intervening act relieves the actor from liability for his antecedent (wrongful act), and under the undisputed facts there is room for reasonable difference of opinion as to whether such act was (wrongful) or unforeseeable, the question should be left to the jury. . . .

Restatement (Second) of Torts, 453 comments b and c (1965).

Similarly, in the Second Circuit, the court considered the reasonable foreseeability of intervening forces, including the actions of third parties, in this case a judge, to determine

whether the probation department would be liable for its recommendation that plaintiff attend A.A. classes which he claimed violated his First Amendment rights. *Warner v. Orange County Dep't. of Probation*, 115 F.3d 1068, 1071 (2nd Cir. 1997). While noting that a complex chain of events led to Warner's participation in religious activities at the A.A. meetings, including the judge's sentencing determination. Reaching the conclusion that the judge's intervening actions did not break the causal link between the actions of the probation department and the violation of Warner's constitutional rights, the Second Circuit relied upon this Court's analysis of causation in the Section 1983 case of *Malley v. Briggs*, 475 U.S. 335, 106 S. Ct. 1092, 89 L. Ed. 2d 271 (1986), where Section 1983 was interpreted as making defendants responsible for the natural consequences of (their) actions. *Id.* at 344 n.7, 106 S. Ct. at 1098 n.7 (*quoting Monroe*, 365 U.S. at 187, 81 S. Ct. at 484).

The Second Circuit in *Warner*, *supra*, framed the issue of causation in terms of whether it was reasonably foreseeable that the sentencing judge would adopt the probation department's recommendation and stated that this was a question of fact. *Id.* 1073.

Applying the same reasoning to the instant case, the issue of whether it was reasonably foreseeable that the Board of Education, and the hearing panel would adopt Rooney's conclusion that Taylor had violated the corporal punishment policy was a question of fact, and the jury determined that such subsequent actions were a foreseeable consequence of Rooney's actions.

Accordingly, the Second Circuit misapplied the tort law principles in this case with respect to proximate causation in this case with respect to proximate causation analysis and made

a significant departure from this Court's application of tort law principles to Section 1983 cases.

II.

THE PETITION SHOULD BE GRANTED BECAUSE THE OPINION BELOW MISAPPLIES THIS COURT'S PRIOR RULINGS ON CAUSATION.

Taylor's petition for writ of certiorari should be granted because the opinion of the court below misapplies this court's prior rulings on causation in Section 1983 cases.

The court below concluded that the

> Supreme Court consistently has refused to impose § 1983 liability upon defendants where the causal connection between their conduct and the constitutional injury is remote rather than direct

citing *Martinez v. California*, 444 U.S. 277, 285, 100 S. Ct. 553, 559, 62 L. Ed. 481 (1980) *Martinez*, *supra*, presented a number of factual situations which led this Court to conclude that ". . . (U)nder the circumstances of this parole decision, (the girl's) death is too remote a consequence of the parole officer's actions to hold them responsible under the federal civil rights law." *Id.*

Among the "circumstances" this Court considered in *Martinez*, *supra*, were the facts that the girl's life was taken five months after the parolee's release; that the parolee was in no sense an agent of the parole board; that the parole board was not aware that decedent, as distinguished from the public at large, faced any special danger. There is a glaring contrast between the facts of *Martinez* and the instant case in terms of

the foreseeability of the plaintiff and the injury. In *Martinez*, the decedent was not reasonably foreseen as being injured by the parolee; whereas in the instant case, Taylor was a foreseeable plaintiff, since he was expressly targeted by Rooney.

Another compelling contrast is the fact that the parolee was not an agent of the state: Rooney, on the other hand was an agent of the Brentwood Union Free School District, in her capacity as a principal at the South Middle School and was functioning in that capacity when she took action against Taylor, resulting in him being charged and suspended for one year without pay.

A final and dispositive distinction between *Martinez* and the instant case is the fact that this Court concluded that there was no deprivation of decedent's life within the meaning of the Fourteenth Amendment. On the other hand, the jury in Taylor's case did determine that there was a deprivation of his rights under the Equal Protection Clause of the Fourteenth Amendment.

Thus, the court below improperly applied this Court's analysis and holding in *Martinez, supra*.

III.

THE PETITION SHOULD BE GRANTED BECAUSE THE OPINION BELOW MISAPPLIES ITS DECISION IN *JEFFRIES v. HARLSTON*, 53 F.2d 9 (2nd Cir. 1995) AND THIS COURT'S PER CURIAM DECISION IN *CITY OF SPRINGFIELD, MASSACHUSETTS v. KIBBE*, 480 U.S. 257, 107 S. Ct. 1114 (1987).

The petition should be granted because the opinion below misrelies on its decision in *Jeffries v. Harlston*, 53 F.3d 9 (2nd

Cir. 1995) where the court determined as a matter of law that the university defendants did not violate the First Amendment rights of Jeffries, a professor, by reducing his term as department chair because of a controversial speech, since they were motivated by reasonable prediction of disruption to the university operations. In reaching this decision, the Second Circuit analyzed a situation where there were 15 Trustees of the University named as defendants and it was determined that 9 of the 15 trustees voted to limit Jeffries' term as chair based on a reasonable expectation of harm, which served as superseding cause, breaking the causal chain between the tainted motives of the six others and the action limiting his term.

The Second Circuit, in reaching this decision in *Jeffries, supra*, noted that there was no evidence that any of the actions of the 6 trustees who were found to have acted with tainted motives, influenced or tainted the vote of the other 9 trustees. *Id.* 14. Thus, the court determined that the 9 trustees voted independently, based on their reasonable prediction of the disruption of the university operations. In the instant case, however, there was no conclusive proof that the Superintendent of Schools, the Board of Education and the Disciplinary Panel were not influenced by the actions of Rooney, who was the precipitation of the investigation of Taylor, the architect of the investigation, the preparer of student witnesses, a participant in Central Administration meetings in the superintendent's office concerning Taylor's fate and one of the primary witnesses at the disciplinary hearing.

By stating that its decision in the instant is controlled by Jeffries, the court below is overlooking the factual distinctions between the two cases in terms of the sphere of influence which Rooney operated in as compared to the 6 Harlston defendants. The court below, further overlooks the fact that in Jeffries there

was a determination that there was no violation of his constitutional right of free speech under the First Amendment, because under the court's application of this Court's decision in *Waters v. Churchill*, 511 U.S. 663, 114 S. Ct. 1878 (1994) it was determined that the 9 defendants acted based upon a reasonable prediction of disruption. Such is not the case here, where the jury did determine that plaintiff's equal protection rights were violated based upon him being treated differently than similarly situated white teachers supervised by Rooney, with respect to the application of the District's corporal punishment policy and with respect to the consequences of the application of that policy.

Specifically, the court below stated that section 1983 relief is only available if the plaintiff was deprived of federal rights. In *Jeffries*, the court determined there was no deprivation of his constitutional rights based on the application of *Waters v. Churchill* with respect to the reasonableness of the 9 defendants' actions. This analysis does not lend itself to Taylor's claim of violation of his equal protection rights under the Fourteenth Amendment based on differential treatment on account of his race. Here, the jury did determine that Taylor was deprived of a constitutional right. The next line of inquiry is whether Rooney was the proximate cause of the Taylor's constitutional deprivation. By applying the Jeffries rationale, as a matter of law, the court below failed to even consider the line of cases which acknowledge that a defendant can be held liable for the consequences attributable to reasonably foreseeable intervening forces, including the acts of third parties. *Gutierrez-Rodriguez v. Cartagena*, 882 F.2d 553, 561 (1st Cir. 1989); *Warner v. Orange County Dept. of Probation*, *supra*.

It is noteworthy that this court in *Jeffries* cited *Gutierrez-Rodriguez*, *supra*, for the proposition that superseding causes relieve defendants of section 1983 liability. *Jeffries*, *supra* 14.

However, it is the determination as to what constitutes a "superseding cause" and what constitutes a "consequence attributable to reasonably foreseeable intervening forces, including the acts of third parties" which is determinative on the issue of section 1983 liability. In Jeffries, the fact that the court below concluded that there was influence of the 9 trustees by the 6 trustees allowed it to conclude that there was a break in the causal connection. In the instant case however, the rationale of Gutierrez-Rodriquez applies, as stated and relied upon by that court in *Marshall v. Perez Artuaga*, 828 F.2d 845, 848 (1st Cir. 1987), *cert denied*, 108 S. Ct. 1027, where the court said that an actor is responsible for: those consequences attributable to reasonably foreseeable intervening forces, including the acts of third parties. (Cite omitted).

The court below also misapplies the reasoning of *City of Springfield v. Kibbe*, 480 U.S. 257, 269, 107 S. Ct. 1114, 1120-1121, 94 L. Ed. 2d 293 (1987) (per curiam) by suggesting that causation is only a statutory application rather than an application of common tort law. The Court's dissent went on to note that analogy to traditional tort principles, however, shows that the law has been willing to trace more distant causation when there is a cognitive component to the defendant's fault than when the defendant's conduct results from simple or heightened negligence. There clearly is a cognitive component to Rooney's actions and their far reaching, foreseeable implications as to warrant the tracing of more distant causation *i.e.* Rooney's actions, in examining Taylor's equal protection claim under Section 1983.

Thus, the court below, by automatically applying the Jeffries rationale, and concluding as a matter of law that Rooney was not the proximate cause of Taylor's constitutional deprivation of his equal protection rights, erred in its application of Jeffries.

IV.

THE PETITION SHOULD BE GRANTED BECAUSE THE OPINION BELOW IS BASED ON THE COURT'S FAILURE TO APPLY THE APPLICABLE STANDARD FOR REVIEW OF A DENIAL OF A MOTION FOR JUDGMENT AS A MATTER OF LAW.

The petition should be granted because the court below failed to apply the applicable standard for review of a denial of a motion for judgment as a matter of law. In reaching its decision to reverse the judgment entered by the Eastern District Court of New York, Spatt, J., the court below concluded that Rooney is entitled to judgment as a matter of law in that no jury could have found that she was the proximate cause of Taylor's constitutional deprivation. The court, in reaching this conclusion, stated that it was guided by the standard governing motions judgment as a matter of law ("JMOL") pursuant to Fed. R. Civ. P. 50, as enunciated in the decisional law of the Second Circuit.

In applying this standard, the court below placed undue emphasis on the sufficiency element of the evidence with respect to JMOL, relying on *Sir Speedy, Inc., v. L&P Graphics, Inc.*, 957 F.2d 1033, 1039 (2nd Cir. 1992) for the principle that JMOL may not be properly granted unless the evidence, viewed in the light most favorable to the non-moving party, is insufficient to permit a reasonable juror to find in that party's favor. However, the court below, in *Sir Speedy, Inc., supra*, p. 1039, citing *Simblest v. Maynard*, 427 F.2d 1, 4 (1970) actually discussed the standard as requiring the court to deny the JMOL unless, viewed in the light most favorable to the non-moving party, the evidence is such that, without weighing the credibility of witnesses or otherwise considering the weight of the evidence, there can be but one conclusion as to the verdict that reasonable men could have reached.

Similarly, the court below, misstates the standard of review in *Samuels v. Air Trans. Local 504*, 992 F.2d 12 (2nd Cir. 1993), concluding that the evidence must be insufficient to permit a reasonable juror to find in the non-moving party's favor. *Id.* p. 14. This is actually an oversimplification of the standard the Second Circuit followed in *Sir Speedy, Inc., supra* and applied in *Samuels, supra* when it concluded that "However thin the evidence, it was not such that a reasonable jury could reach only one conclusion."

Thus, there is clear authority in this circuit, from which the court below deviated in examining the sufficiency of the evidence in terms of the certainty of the outcome in the mind of a reasonable juror: If it is not certain that a reasonable juror could reach only one conclusion, in favor of the moving party, there is no grounds for JMOL.

This is the appropriate standard by which the court below should have examined the evidence in this case below, to determine whether the record clearly supported a finding that a reasonable juror could reach only one conclusion that Rooney was not the proximate cause of the deprivation of Taylor's constitutional rights under the equal protection clause of the Fourteenth Amendment.

As previously set forth herein, most of the circuit courts and this Court have agreed that the issue of causation can be a factual determination, especially when it comes to determining whether the defendant's conduct was the precipitating action from which the acts of a third party would reasonably flow. *See Martinez v. State of California*, 444 U.S. 277, 100 S. Ct. 553 (1980); *Springer v. Seamen*, 821 F.2d 871 (1st Cir. 1987); *Gutierrez-Rodriguez v. Cartagena*, 882 F.2d 553 (1st Cir. 1989); *Warner v. Orange County Department of Probation*, 115 F.3d 1068 (2nd Cir. 1997).

Accordingly, the petition must be granted to resolve the issue of the appropriate standard of review in a section 1983 case on the issue of causation.

CONCLUSION

This case presents important questions which must be resolved in terms of causation issues in equal protection cases brought under section 1983. The court below has misapplied and misconstrued this Court's rulings on this issue and is also inconsistent with he rulings of other circuits courts on this issue. By granting Taylor's petition for certiorari, however, this Court can correct the Second Circuit's decision on the issue of causation in section 1983 cases. By granting this petition, the Court will also clarify the standard of review of a denial of a judgment as a matter of law.

Accordingly, Charles B. Taylor respectfully requests that his petition for a writ of certiorari be granted.

Respectfully submitted,

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APPENDIX

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT DECIDED MAY 6, 1998

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

August Term, 1997

(Argued: December 8, 1997 Decided: May 6, 1998)

Docket No. 97-7481

CHARLES B. TAYLOR,

Plaintiff-Appellee,

—v.—

BRENTWOOD UNION FREE SCHOOL DISTRICT; BOARD OF EDUCATION, BRENTWOOD UNION FREE SCHOOL DISTRICT; ANTHONY FELICO, in his capacity as a member of the Board of Education, Brentwood UFSD; RUTH ROSENTHAL, in her capacity as a member of the Board of Education, Brentwood UFSD; STEVEN COLEMAN, in his capacity as a member of the Board of Education, Brentwood UFSD; FRANK CANNON, in his capacity as a member of the Board of Education, Brentwood UFSD; MARY REID, in her capacity as a member of the Board of Education, Brentwood UFSD; OWEN MCCAFFREY, in his capacity as a member of the Board of Education, Brentwood UFSD; JAIME SUAREZ, in his capacity as a member of the Board of Education, Brentwood UFSD; FRANK MAURO, in his capacity as Superintendent of Schools, Brentwood UFSD; ROSEMARY TOWNLEY, DR., in her capacity as a member of the Disciplinary Hearing Panel;

Appendix A

THOMAS CARAMORE, DR., in his capacity as a member of the Disciplinary Hearing Panel,

Defendants,

ANNE ROONEY, in her capacity as Acting Principal, South Middle School,

Defendant-Appellant.

Before:

MINER, PARKER and WOOD*,

Circuit Judges.

Appeal from a money judgment entered in the United States District Court for the Eastern District of New York (Spatt, J.) upon a jury verdict for plaintiff teacher on his § 1983 claim against defendant school principal for damages arising from his one-year suspension from teaching for the use of excessive force, the plaintiff having alleged that he was denied his right to equal protection on the basis of race.

Reversed.

HARRIET A. GILLIAM, Aquebogue, NY, *for Plaintiff-Appellee.*

ROBERT J. CIOVACCO, Certilman Balin Adler & Hyman, LLP, East Meadow, NY (Jeannine A.

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* The Honorable Harlington Wood, Jr., of the United States Court of Appeals for the Seventh Circuit, sitting by designation.

Broomhall, Neil H. Angel, of counsel), *for Defendant-Appellant.*

MINER, *Circuit Judge*:

Defendant-appellant Anne E. Rooney appeals from a money judgment entered in favor of plaintiff-appellee Charles B. Taylor in the United States District Court for the Eastern District of New York (Spatt, J.), following a jury trial. Taylor prevailed on his claim, brought pursuant to 42 U.S.C. § 1983, that his one-year suspension from teaching constituted race discrimination violative of his equal protection rights under the Fourteenth Amendment of the Constitution. At the time of his suspension, Taylor was a tenured teacher at Brentwood South Middle School ("South") in Brentwood, New York, where Rooney served as acting principal. Rooney advances the following contentions on appeal: (1) she was entitled to judgment as a matter of law because her actions were not the proximate cause of any injury sustained by Taylor; (2) she was entitled either to absolute immunity or qualified immunity from liability because she acted pursuant to her official duty to report complaints regarding the use of corporal punishment by teachers at her school; (3) the district court erred in submitting to the jury the issue of whether other school teachers and Taylor were similarly situated, since that issue was clear as a matter of law; (4) the principle of collateral estoppel prevented Taylor from relitigating, subsequent to the decision of the disciplinary hearing panel, the issue of whether he was treated differently from similarly situated Caucasian teachers; (5) the district court erroneously admitted evidence relating to certain allegedly discriminatory statements made by Rooney; (6)

the court improperly instructed the jury, both in its charge as well as in its special interrogatories, that intent to inhibit Taylor's right of free speech could serve as the basis for his § 1983 claim when his First Amendment claim had already been dismissed; and (7) the court abused its discretion in calculating the attorney's fees award in this case.

For the reasons that follow, we reverse the judgment of the district court and remand with instructions to enter judgment for Rooney.

BACKGROUND

Defendant-appellant Anne E. Rooney was appointed acting principal of South in September of 1987 and served in that capacity at all times relevant to this appeal. Plaintiff-appellee Charles B. Taylor, who is African-American, was employed as a teacher of technology and industrial arts at South since September of 1971. Taylor had a history of physical confrontations with students at South, beginning in 1976 and occurring throughout the administrations of three different South principals. Taylor's personnel file, for example, is replete with correspondence written by various administrators that describe the altercations, set forth Board of Education Policy 5131[1] (the "Corporal Punishment Policy" or

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[1] Board of Education Policy 5131 provides, in pertinent part, that:

> Corporal punishment is not an effective means of developing self-discipline. The [Brentwood Union Free School] District will not condone or accept the use of physical force (corporal punishment) upon a pupil for the purpose of punishing that pupil.
>
> Reasonable physical force used for the following purposes is not to be misconstrued as corporal punishment:
>
> (1) to protect oneself form physical injury;
>
> (2) to protect another pupil or teacher or any other person from physical injury;
>
> (3) to protect the property of the school or of others;

(footnote continued)

"Policy 5131") of the Brentwood Union Free School District (the "District"), and caution Taylor against violating such policy. The record indicates that Taylor had been reminded of the Corporal Punishment Policy repeatedly over a fifteen-year period and that he had received several reprimands regarding the manner in which he disciplined students. Taylor has denied in whole or in part each of the allegations of improper conduct.

Upon receipt of a complaint of either a parent or student, principals at each school within the District are required to report to Michael Fasullo, Director of Employee Relations and Planning in the District, any incidents that involve the use of physical force on a student by a teacher. Specifically, Fasullo testified that every year principals are reminded that whenever they receive a complaint from a student or parent regarding corporal punishment, they "are required to contact Central Administration."[2] Fasullo further testified that a principal typically will place a phone call to him regarding an incident and then follow up with written information. The decision of whether to report such an incident is not left to the discretion of the principals, and principals are not free merely to attempt to resolve the matter at the building level when a complaint has been made.

Fasullo used the information provided by the principals to prepare reports regarding the use of corporal punishment at schools throughout the District. Such reports must be submitted to the Commissioner of Education of the State of New

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(4) to restrain or remove a pupil whose behavior is interfering with the orderly exercise and performance of school district functions, powers or duties, if that pupil has refused to comply with a request to refrain from further disruptive acts.

[2] Although not specifically defined by the parties in their briefs, the term "Central Administration" appears to refer to the various administrators who are employed by the District.

York (the "Commissioner") on a semi-annual basis.[3] In addition to using the data supplied by local school authorities to prepare semiannual reports, District administrators used the information to determine whether to conduct an investigation into the incidents underlying the complaints.

The record indicates that Rooney fully complied with her duty to report complaints regarding the use of corporal punishment by teachers working in her school. For example, after receiving complaints that Taylor had used excessive force in disciplining students Rudy P.[4] and Alexis A., Rooney telephoned District administrators and subsequently sent them copies of her correspondence with Taylor relating to the events. For example, on May 23, 1989, Rooney sent a memorandum to Taylor recounting the incident involving Rudy P., which occurred on that day. A copy of this memo was sent to District officials Welch and Black. After the incident involving Alexis A., Rooney asked Assistant Principal Ithiel Lloyd to take photographs of the injured child's neck. Rooney testified that she sent the photographs either to Fasullo or to Michael T. Welch, the District's Director of Secondary Education.

Fasullo's report for the six-month period commencing on January 1, 1989 and ending on June 30, 1989 states that there

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3 In every school district, the board of education or its equivalent is required to submit to the Commissioner the following:

> a semiannual report . . . , by January 15th and July 15th of each year . . . setting forth the substance of each complaint about the use of corporal punishment received by local school authorities during the reporting period, the results of each investigation, and the action, if any, taken by the school authorities in each case.

N.Y. Comp. Codes R. & Regs. tit. 8, § 100.2(l)(3)(ii).

4 To protect the identities of the children involved, we follow the lead of the district court and do not use the full names of the various children. *See Taylor v. Brentwood Union Free School Dist.*, 908 F. Supp. 1165, 1170 (E.D.N.Y. 1995).

was an ongoing investigation into a complaint made on May 23, 1989. This complaint was made by the mother of Rudy P. and concerned the physical confrontation between Taylor and Rudy P. that occurred on May 8, 1989. Fasullo's report for the period of July 1, 1991 through December 31, 1991 notes a complaint made on December 5, 1991, concerning the incident between Taylor and Alexis A. that occurred on the same day.

In the cases of Rudy P. and Alexis A., District officials decided that further investigation was warranted. Accordingly, the District fully and independently investigated the events of May 8, 1989 and December 5, 1991. Fasullo was charged with conducting the investigations. He testified that his investigation of the incident involving Rudy P. was undertaken in three stages. First, he reviewed with members of South's administration the existing reports and documentation relating to the incident. Second, he met with Taylor and representatives from his union to obtain a review of the event from Taylor's perspective. Finally, Fasullo interviewed various students who witnessed the event. Fasullo's subsequent investigation of the incident involving Alexis A. proceeded in much the same way.

Taylor was provided an opportunity to present his own version of the incidents involving the two students. On June 28, 1989, a meeting was held at the District's offices that included a discussion of the incident involving Rudy P. Associate Superintendent Les Black, Fasullo, Welch, Taylor and Taylor's attorney, Joseph Fritz, attended the meeting. At a meeting held at the District's offices on December 11, 1991, the confrontation between Taylor and Alexis A. was discussed.

Subsequent to Fasullo's investigation of the incident involving Rudy P., Superintendent Mauro first decided not to

take disciplinary action against Taylor. However, after Fasullo submitted a report and recommendation that detailed his investigation of the December 5th incident involving Alexis A. and recommended that charges be filed pursuant to N.Y. Educ. Law § 3020-a (McKinney 1993), the Superintendent concluded that disciplinary charges should be preferred against Taylor in connection with both incidents. The record indicates that Rooney made no recommendation to District officials or anyone else regarding whether charges should be filed against Taylor. In fact, other than complying with her duty to report all complaints regarding the use of physical force on students, the record indicates that Rooney had absolutely no input into whether the Superintendent would seek discipline for Taylor. Rooney testified at trial that she neither requested nor recommended that charges be brought and that at no time was she consulted about the issue by District administrators. Taylor has presented no evidence to refute her testimony.

Even though the Superintendent decided to seek discipline for Taylor, charges could not be brought against the teacher without the approval of a majority of the seven-member Board of Education (the "Board"). Accordingly, a meeting of the members of the Board was scheduled, and the Board members were briefed by Associate Superintendent Black on the incidents in which Taylor was involved. After posing various questions to Black about the incidents, a majority of the members of the Board agreed that there was probable cause to conclude that Taylor had acted improperly. Accordingly, the Board approved the filing of three charges against Taylor.

The Superintendent filed the charges, pursuant to § 3020-a, on January 16, 1992 and sought Taylor's dismissal, the maximum penalty available. The charges included two charges of misconduct and conduct unbecoming a teacher, and a third charge of insubordination. The first charge

alleged that Taylor had used excessive force in disciplining Rudy P., resulting in bruising of the student's arm and neck. The second charge alleged that Taylor had used excessive force in disciplining Alexis A., resulting in bruising of that student's neck. The third charge alleged that Taylor had disregarded prior oral and written directions from the administration at South regarding his improper use of physical force in disciplining students. Pursuant to § 3020-a, Taylor requested a hearing before a three-member panel.

The disciplinary hearing panel convened for hearings on eight separate occasions between April and October of 1992. At the hearings, the District produced eight witnesses: students Santos S., Alexis A., Rudy P. and Anthony S., Assistant Principal Lloyd, Acting Principal Rooney, Associate Superintendent Black, and Director of Employee Relations and Planning Fasullo. Taylor produced six witnesses: Cartez Johnson, Joseph Basso and Nancy Vasquez, each a teacher at South, student Michael N., Black and Fasullo. Taylor also testified on his own behalf.

With respect to the second charge, Alexis A. testified about the events that occurred on December 5, 1991 after he began experiencing chest pains and then stood up near his desk in Taylor's classroom. The following is a summary of his testimony that appears in the decision of the disciplinary hearing panel:

> [Taylor] came over to him and told him to sit down and, in a hard manner touched his chest with one of his hands. Alexis told [Taylor] that he was hurting him and pushed [Taylor's] hand away with his own . . . . [Taylor then] grabbed the front of his sweater with both hands and threw his[sic] to the floor over his extended leg. [Taylor] then grabbed Alexis by the hand with both hands and pushed him against the wall. Alexis was wear-

> ing rosary beads around his neck at the time. He tried to grab [Taylor] by his tie . . . . Alexis [then proceeded] to the office of Assistant Principal Lloyd, where pictures were taken of his neck.

Santos S. was an eyewitness to the events that took place on December 5th. He corroborated Alexis' version of events. According to Santos, "Taylor told Alexis to sit down and when he refused to do so, Taylor put his hand on Alexis' shoulder. Alexis then pushed Taylor's hand away, upon which Taylor threw Alexis on the floor by grabbing him by the neck and throwing him over his leg." Lloyd testified that Alexis was emotionally upset when he and Santos arrived at Lloyd's office shortly after the altercation and that there were marks on Alexis' neck. Rooney testified that she also saw "welts" on Alexis' neck after the incident in Taylor's classroom and that she directed Lloyd to photograph the child's neck. Additionally, she testified that she had referred Taylor to Policy 5131 on various occasions between 1987 and 1989 and that she had warned him that he was not to use excessive force against students.

Black testified that he had met with Taylor on a number of occasions in his current capacity as associate superintendent of schools and in his previous capacity as director of elementary education, each time warning Taylor not to use improper physical force on students. For example, Black stated that he had warned Taylor and his attorney, at the meeting held on June 28, 1989, that violations of the District's Corporal Punishment Policy might lead to the holding of a disciplinary proceeding.

With respect to the first charge, Rudy P. testified that Taylor had placed him in a headlock on May 8, 1989 and that, as a result of the incident, he had sustained scratches on his arm and a red mark on his neck. Rudy P. also testified that he had

sustained a bruise on his head when Taylor pushed him into a classroom, causing him to bump his head on the frame of a door. Anthony S. testified that he saw Taylor holding Rudy P. in a headlock and observed redness on Rudy's forehead.

The panel dismissed the charges regarding the May 8th incident, having concluded that such charges had not been proven by a preponderance of the evidence. Conversely, the panel determined that the second charge, relating to the December 5th incident, had been proven by a preponderance of the evidence. Specifically, it found that Taylor had used excessive force in disciplining Alexis A. The panel considered significant the fact that Taylor denied that he had flipped Alexis A. over his leg during the December 5th incident, despite extensive testimony to the contrary. According to the written decision of the panel, "This fact was most compelling in light of the testimony of both the Board witnesses to the incident, and [Taylor's] own witness, Michael, who testified . . . [that] Mr. Taylor flipped [Alexis]."[5]

Accordingly, while it deemed the penalty of termination excessive, the panel voted in favor of a one-year suspension without pay. After a meeting held on December 19, 1993, the District implemented the decision of the disciplinary hearing panel. Taylor was suspended from January 22, 1993 through January 22, 1994. Taylor appealed the panel's decision, pursuant to N.Y. Educ. Law § 3020-a, to the Commissioner. In a comprehensive written decision, Commissioner Thomas Sobol dismissed Taylor's appeal, having concluded that there was no basis upon which to reverse the decision of the disciplinary hearing panel.

On January 17, 1995, Taylor filed a complaint in federal district court alleging, *inter alia*, that he was singled out for

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[5] The written decision of the panel did not contain any disposition of the insubordination charge.

disciplinary action by the District, by the Board, by Anthony Felico, Ruth Rosenthal, Steven Coleman, Frank Cannon, Mary Reid, Owen McCaffrey, Jaime Suarez, individual members of the Board, by Superintendent Mauro, by Drs. Rosemary Townley and Thomas Caramore, individual members of the disciplinary hearing panel, and by Rooney because of his race and open criticism of their treatment of minority teachers. *See Taylor v. Brentwood Union Free School Dist.*, 908 F. Supp. 1165, 1169 (E.D.N.Y. 1995). Plaintiff sued under 42 U.S.C. §§ 1983 and 1985(3), alleging that his equal protection rights under the Fourteenth Amendment and his free speech rights under the First Amendment had been violated as a result of his suspension, and that his suspension was illegal under N.Y. Exec. Law § 290 *et seq.*, because it occurred on account of his race.

Prior to trial, the court ruled on two motions to dismiss. *See id.* at 1172. The first motion was made by defendants Caramore and Townley, the two members of the disciplinary hearing panel who voted in favor of disciplinary action. *See id.* Caramore and Townley argued, *inter alia*, that they were shielded from liability on the ground of absolute immunity. *See id.* The district court agreed and dismissed the complaint against these two defendants. *See id.* at 1175. The remaining defendants moved to dismiss the state law claims and the constitutional claims, pursuant to Fed. R. Civ. P. 12(b)(6). *See id.* at 1172. The district court dismissed the state law claims, having concluded that they were time barred, but declined to dismiss the constitutional claims. *See id.* at 1176-77.

The case went to trial before Judge Spatt on October 15, 1996. At the close of the plaintiff's case, the defendants moved, pursuant to Fed. R. Civ. P. 50(a), for dismissal of each of the claims alleging violations of Taylor's constitutional rights. The court dismissed the First Amendment

claims on the ground that speech of public concern was not demonstrated. The court reserved decision on the motion to dismiss the equal protection claims. Ultimately, the sole issue presented to the jury was whether Taylor was treated differently from various Caucasian teachers who were similarly situated.

On November 7, 1996, the jury returned a verdict in favor of the plaintiff only against Rooney. The verdict, rendered in answers to special interrogatories, awarded Taylor $67,412.00 for back-pay, $5,143.80 for loss of medical insurance benefits, and $61,249.60 for loss of pension benefits. Following the return of the verdict, defendant-appellant renewed her motion for judgment as a matter of law, pursuant to Fed. R. Civ. P. 50(b). After reviewing the standard for granting or denying a motion for judgment as a matter of law, the district court denied such motion. The plaintiff then moved for attorney's fees and costs, pursuant to 42 U.S.C. § 1988. Counsel for Rooney opposed the fees and costs requested. By oral ruling during a telephonic conference held on January 24, 1997, the district court awarded the plaintiff $54,022.70 in fees and costs.

By orders dated March 13 and 17, 1997, the district court ordered that judgment be entered against Rooney in the amount of $187,828.10 and that the complaint be dismissed against all remaining defendants. This appeal followed.

DISCUSSION

Rooney raises seven issues on this appeal. First, she asserts that she was entitled to judgment as a matter of law because the independent actions of various officials of the District, various members of the Board, various members of the disciplinary hearing panel and the Commissioner caused

Taylor's suspension and, accordingly, prevented Rooney's actions from being the proximate cause of any injury to Taylor. Second, Rooney argues that she was entitled either to absolute immunity or qualified immunity from liability for acting pursuant to her official duty to report complaints regarding the use of corporal punishment by teachers at her school. Third, she contends that the district court erred in submitting to the jury the issue of whether other school teachers and Taylor were similarly situated since that issue was clear as a matter of law. Fourth, Rooney asserts that the principle of collateral estoppel prevented Taylor from relitigating, subsequent to the decision of the disciplinary hearing panel, the issue of whether he was treated differently from similarly situated Caucasian teachers. Fifth, Rooney argues that the district court erroneously admitted evidence relating to certain allegedly discriminatory statements made by Rooney.[6] Sixth, she contends that the district court improperly instructed the jury, both in its charge as well as in its special interrogatories, that intent to inhibit Taylor's right of free speech could serve as the basis for his § 1983 claim when his First Amendment claim had already been dismissed. Finally, she argues that the court abused its discretion in calculating the attorney's fees award in this case. Because we conclude that the district court's judgment must be reversed on the first ground, we do not address Rooney's remaining contentions.

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6 Taylor presented the testimony of Elizabeth A. Phipps, a probationary teacher at South, who was denied tenure during Rooney's administration. Phipps, a Caucasian woman married to an African-American man, testified to several statements made by Rooney, which Taylor argued were indicative of racial animus on the part of Rooney. For example, Phipps testified as follows: "There was one incident when I was rushing to get my paycheck in the main office and I got it and I went, oh, wow. And she said to me, well, it beats the bread line, doesn't it?" Additionally, Phipps testified that Rooney made the following comment in response to Phipps' statement that she was having a "bad hair day": "[Y]ou have black, dark roots, don't you?"

Appendix A

I. *Standard for Deciding a Motion for Judgment as a Matter of Law*

The standard governing motions for judgment as a matter of law ("JMOL") pursuant to Fed. R. Civ. P. 50, formerly denominated motions for directed verdict or motions notwithstanding the verdict, *see generally Ahern v. County of Nassau*, 118 F.3d 118, 120 n.1 (2d Cir. 1997); *Samuels v. Air Transp. Local 504*, 992 F.2d 12, 14 (2d Cir. 1993), is well established. JMOL may not properly be granted unless the evidence, viewed in the light most favorable to the non-moving party, is insufficient to permit a reasonable juror to find in that party's favor. *See, e.g., Sir Speedy, Inc. v. L & P Graphics, Inc.*, 957 F.2d 1033, 1039 (2d Cir. 1992). In deciding such a motion, the court must give deference to all credibility determinations and reasonable inferences of the jury, and it may not itself weigh the credibility of witnesses or consider the weight of the evidence. *See Vasbinder v. Ambach*, 926 F.2d 1333, 1339-40 (2d Cir. 1991). Thus, judgment as a matter of law should not be granted unless

> (1) there is such a complete absence of evidence supporting the verdict that the jury's findings could only have been the result of sheer surmise [or] conjecture, or (2) there is such an overwhelming amount of evidence in favor of the movant that reasonable and fair minded [persons] could not arrive at a verdict against [it].

Ahern, 118 F.3d at 120 (quoting *Bonura v. Chase Manhattan Bank, N.A.*, 795 F.2d 276, 277 (2d Cir. 1986) (per curiam)). The same standards govern the court of appeals in its review of a district court's decision denying a motion for JMOL. *See id.* Within this framework, we consider the propriety of JMOL in light of the substantive law and the evidence in this case.

II. Causation

Section 1983 provides the basis for Taylor's race discrimination claim against Rooney.[7] To prevail on such a claim, section 1983 requires that the plaintiff prove, *inter alia*, that the defendant caused the deprivation of his or her rights. *See Monell v. Department of Social Servs.*, 436 U.S. 658, 692 (1978). "The causation requirement of § 1983 is a matter of statutory interpretation rather than of common tort law." *City of Springfield v. Kibbe*, 480 U.S. 257, 269 (1987) (per curiam) (quotation omitted). The Supreme Court consistently has refused to impose § 1983 liability upon defendants where the causal connection between their conduct and the constitutional injury is remote rather than direct. *See, e.g., Martinez v. California*, 444 U.S. 277, 285 (1980). For example, in *Martinez*, the Court refused to hold parole officials liable for the death of a fifteen-year-old girl who was murdered by a parolee five months after his parole. *See id.* The Court stated:

> [W]e do hold that at least under the circumstances of this parole decision, [the girl's] death is too remote a consequence of the parole officers' action to hold them responsible under the federal civil rights law. Although a § 1983 claim has been described as a species of tort liability, . . . it is perfectly clear that not every injury in which a state official has played some part is actionable under that statute.

Id. (quotation and citation omitted).

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7 42 U.S.C. § 1983 provides, in pertinent part, that:

> [e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . .

In the present case, Rooney argues that she cannot be held liable because she did not proximately cause Taylor's suspension. Specifically, she argues that (1) Taylor was suspended based upon the independent investigations and findings of Fasullo and other District officials, the decision of the Board to prefer charges against Taylor, the decision of the disciplinary hearing panel that Taylor should be suspended for one year without pay and the Commissioner's rejection of Taylor's appeal from the panel's decision; and (2) that these intervening acts break the causal connection between Rooney's reporting of various incidents involving Taylor to the District and the decision to suspend Taylor. We agree. Accordingly, we must reverse the denial of JMOL.

Our decision in *Jeffries v. Harleston*, 52 F.3d 9 (2d Cir. 1995), controls the outcome of this case. In that case, we held that although the actions of certain defendants were unconstitutional, liability under § 1983 did not attach because such actions could not be considered the cause of any injury sustained by the plaintiff.

Leonard Jeffries, the chairman of the Black Studies Department at City College of New York ("City College"), which is part of the City University of New York ("CUNY"), sued City College President Bernard Harleston, CUNY Chancellor Ann Reynolds and fourteen CUNY trustees under § 1983, alleging violations of his First Amendment rights. *Jeffries*, 52 F.3d at 10-11. The suit arose out of the decision of the CUNY Board of Trustees to limit Jeffries' term as department chairman to one year, even though such terms typically last three years, because of a controversial speech Jeffries gave addressing the bias of New York State's public school system and the history of black oppression. In the course of such speech, Jeffries made several anti-Semitic remarks.

After the speech, Harleston and Reynolds arranged for the CUNY Board of Trustees to vote as to whether to limit Jeffries' term as department chair. Nine of the fourteen Trustees voted to limit Jeffries' term to a year, four voted to remove him immediately and one abstained from the vote because she had made derogatory comments about Jeffries in the past. Harleston and Reynolds did not vote because they were not Trustees. Jeffries sued all fourteen of the Trustees as well as Harleston and Reynolds. However, suit against one of the trustees was dropped when she died during the course of the trial, leaving fifteen defendants. The jury found that only six defendants took action against Jeffries because of his speech, and would not have done so had Jeffries not given the speech (Harleston, Reynolds and four of the living Trustees) (collectively, the "Harleston defendants").

Based upon the teachings of the Supreme Court in *Waters v. Churchill*, 511 U.S. 661 (1994), we held that despite the fact that six out of nine defendants took action in connection with Jeffries' demotion because of the speech and despite the fact that the jury decided that those "six defendants 'acted with the malicious intent to violate the plaintiff's rights . . . or with malicious intent to unlawfully injure him, or . . . with a callous or reckless disregard of the plaintiff's First Amendment rights,' " *Jeffries*, 52 F.3d at 14, the actions of these defendants were not the cause of the plaintiff's injury. We stated:

> [E]lementary principles of causation compel the conclusion that Jeffries' First Amendment rights were not violated . . . . The jury found that at least nine of the defendants, a clear majority, limited Jeffries' term because they expected his speech would harm CUNY (and not for invidious motives), *and* that this expectation was reasonable . . . . While Harleston and Reynolds were instrumental in putting the one-term issue on the

> Board's agenda, . . . and may indeed have done so to punish Jeffries, the nine votes based on legitimate grounds constitute a superseding cause breaking the causal chain between the tainted motives of Harleston and Reynolds and the decision to limit Jeffries' term.

Id. Accordingly, we held that there was no § 1983 liability in that case. *See id.* ("[T]he motives of the Harleston defendants —whatever they were—did not cause a cognizable injury to Jeffries.").

The situation of Rooney in the present case is indistinguishable from that of the Harleston defendants in all material respects. Specifically, we believe that the independent investigations of the incidents involving Rudy P. and Alexis A. and the other events culminating in the decision of the disciplinary hearing panel to suspend Taylor constitute a superseding cause of Rooney's injury, breaking the causal link between any racial animus Rooney may have had and the suspension. Because we conclude that no reasonable jury could find Rooney's actions to be the cause of Taylor's injury, we need not remand for a new trial. *See id.* (holding that no retrial is needed where elementary principles of causation compel the conclusion that plaintiff's rights were not violated).

Based on the record before us, there is no basis for concluding that any ill motives Rooney may have had impacted the decision to suspend Taylor. Based on the District's requirement that principals report all complaints regarding the use of corporal punishment in their schools, Rooney contacted District officials regarding the incidents involving Rudy P. and Alexis A. She also made some preliminary inquiries and obtained photographs of injuries sustained by Alexis A. Thereafter, District officials decided to conduct a more formal investigation into the matters and Rooney took

no part in this decision. Fasullo was charged with the responsibility for the conduct of the District's investigation. The Board later approved the filing of disciplinary charges based upon its own conclusion that there was probable cause to conclude that Taylor had violated Policy 5131 and was guilty of insubordination. Rooney also took no part in the decision to charge Taylor and had no control over the ultimate disposition of the charges. The disciplinary panel, acting pursuant to § 3020-a, concluded that there was a violation of the Corporal Punishment Policy in connection with the incident involving Alexis A. That panel deemed the appropriate punishment to be a one-year suspension without pay. Finally, the Commissioner dismissed Taylor's appeal, having concluded that there existed no basis for a reversal.

In examining the facts of this case, we find no basis to conclude that this case is distinguishable from *Jeffries*. Just as the Harleston Defendants could not be held liable in *Jeffries*, where a majority of Trustees voted to limit Jeffries' term for legitimate reasons, Rooney cannot be held liable where a majority of the disciplinary hearing panel voted, based on the evidence before it, to suspend Taylor for one year without pay.

Although not cited by the parties in their briefs, we note that we have held in *Warner v. Orange County Dept. of Probation*, that a defendant may be held liable for "those consequences attributable to reasonably foreseeable intervening forces, including the acts of third parties." 115 F.3d 1068, 1071 (2d Cir. 1997) (quotation omitted). Specifically, we concluded in that case that a probation department could be held liable under § 1983 for violating the First Amendment's Establishment Clause where (1) the probation department's presentence report recommended to a sentencing judge that the plaintiff be required to attend Alcoholics Anonymous ("AA")—a program containing a religious component—at the

discretion of the plaintiff's probation officer; (2) the sentence imposed by the judge contained this special condition; and (3) the assigned probation officer exercised the discretion granted to him and directed the plaintiff to attend AA meetings. Because the decision of the sentencing judge to impose the special condition was reasonably foreseeable, we rejected the contention that the decision imposing the condition was a superseding cause of the alleged constitutional injury. We therefore concluded that liability could attach to the probation department. However, we believe that the present case is distinguishable from *Warner* in two material respects. First, in *Warner*, although the probation department need not have recommended a specific program to the sentencing judge, it affirmatively recommended the AA program. Instead of merely recommending that an alcohol treatment program be considered, the probation department made a discretionary decision to recommend a particular program, the attendance at which ultimately caused the alleged constitutional injury. Second, it was not until the probation officer ordered that Warner attend the meetings that the injury occurred. The judge did not order Warner's attendance, but left the decision to the probation officer. In the present case, Rooney did not recommend that District officials prefer charges against Taylor; rather, she merely reported the filing of complaints relating to the incidents involving Rudy P. and Alexis A. in accordance with the instructions of District administrators, who were required to comply with N.Y. Comp. Codes R. & Regs. tit. 8, § 100.2(l)(3)(ii). She did not exercise any discretionary authority, nor was discretionary authority conferred upon her, as was the case in *Warner*. Moreover, unlike the situation in *Warner*, the injury sustained by Taylor occurred immediately upon the implementation of the disciplinary hearing panel's suspension decision, not after some positive action taken by Rooney. Neither the formal inves-

tigation nor the disciplinary hearing nor the sanctions were reasonably foreseeable to Rooney. All were independent causes that superseded Rooney's reports in causing any injuries that Taylor may have sustained.

Because no reasonable factfinder could conclude that Rooney was the cause of any constitutional harm or injury to Taylor, Taylor cannot prevail in this § 1983 action.

CONCLUSION

In accordance with the foregoing, we reverse the judgment of the district court and remand with instructions to enter judgment for Rooney.

APPENDIX B — JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK DATED MARCH 17, 1997

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CV 95 - 0178 (ADS)

CHARLES B. TAYLOR,

Plaintiff,

—

-against-

BRENTWOOD UNION FREE SCHOOL DISTRICT; BOARD OF EDUCATION, BRENTWOOD UNION FREE SCHOOL DISTRICT; ANTHONY FELICO, RUTH ROSENTHAL, STEVEN COLEMAN, FRANK CANNON, MARY REID, OWEN McCAFFREY, JAIME SUAREZ in their capacities as Members of the Board of Education, BRENTWOOD UFSD; ANNE ROONEY, In Her capacity as Acting Principal South Middle School; FRANK MAURO, In his capacity as Superintendent of School Brentwood UFSD,

Defendants.

JUDGMENT

On November 7, 1996, following several days of trial, a jury returned a verdict in favor of plaintiff CHARLES B. TAYLOR and against defendant ANNE ROONEY, in her official capacity as Acting Principal South Middle School; an order of Hon. Arthur D. Spatt, United States District Judge, having been filed on March 14, 1997, directing the Clerk of

the Court to enter judgment in favor of plaintiff CHARLES B. TAYLOR and against defendant ANNE ROONEY, in her official capacity as acting Principal South Middle School, in the sum of $67,412.00 for back pay, $5,143.80 for loss of medical insurance benefits, $61,249.60 for loss of pension benefits, and $54,022.70 for attorney's fees and costs, for a total award of $187,828.10; and that the plaintiff CHARLES B. TAYLOR take nothing of the remaining above-named defendants, it is

ORDERED AND ADJUDGED that judgment is hereby entered in favor of plaintiff CHARLES B. TAYLOR and against defendant ANNE ROONEY, in her official capacity as Acting Principal South Middle School in the sum of $187,828.10; that the plaintiff CHARLES B. TAYLOR take nothing of defendants BRENTWOOD UNION FREE SCHOOL DISTRICT; BOARD OF EDUCATION, BRENTWOOD UNION FREE SCHOOL DISTRICT; ANTHONY FELICO, RUTH ROSENTHAL, STEVEN COLEMAN, FRANK CANNON, MARY REID, OWEN McCAFFREY, JAIME SUAREZ, in their capacities as Members of the Board of Education, BRENTWOOD UFSD, and FRANK MAURO, in his capacity as Superintendent of School Brentwood UFSD; and that the action is hereby dismissed as to those defendants.

Dated: Uniondale, New York
March 17, 1997

ROBERT C. HEINEMANN
Clerk of the Court

By: s/ Joseph Di Talia
JOSEPH DI TALIA
Deputy Clerk-in-Charge

APPENDIX C — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK DATED MARCH 13, 1997

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

95 CV 0178 (ADS)

CHARLES B. TAYLOR,

Plaintiff,

v.

BRENTWOOD UNION FREE SCHOOL DISTRICT; BOARD OF EDUCATION, BRENTWOOD UNION FREE SCHOOL DISTRICT; ANTHONY FELICO, RUTH ROSENTHAL, STEVEN COLEMAN, FRANK CANNON, MARY REID, OWEN McCAFFREY, JAIME SUAREZ, in their capacities as Members of the Board of Education, BRENTWOOD UFSD; ANNE ROONEY, In her Capacity as Acting Principal South Middle School; FRANK MAURO, In his Capacity as Superintendent of School Brentwood UFSD,

Defendants.

* * *

ORDER

SPATT, District Judge:

It is hereby

Appendix C

ORDERED, that the February 5, 1997 order of this Court is vacated; it is further

ORDERED, that judgment be entered in favor of the plaintiff, against the defendant Anne Rooney in her official capacity as Acting Principal South Middle School, in the form of back pay in the sum of $67,412.00, loss of medical insurance benefits in the amount of $5,143.80, loss of pension benefits in the sum of $61,249.60, and attorney's fees and costs in the amount of $54,022.70; it is further

ORDERED, that judgment be entered in favor of the remaining defendants; and it is further

ORDERED, that the Clerk of the Court is directed to close this case.

SO ORDERED.

Dated: Uniondale, New York
March 13, 1997

s/ Arthur D. Spatt
Hon. Arthur D. Spatt
United States District Judge

APPENDIX D — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT DENYING PETITION FOR REHEARING FILED JUNE 24, 1998

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
UNITED STATES COURT HOUSE
40 FOLEY SQUARE
NEW YORK 10007

GEORGE LANGE III
CLERK

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the _____ day of June one thousand nine hundred and ninety-eight.

Dkt No: 97-7481

Taylor

Appellee

v

Brentwood Union Free

Appellant

A petition for rehearing containing a suggestion that the action be *reheard* in banc having been filed herein by the appellee Charles B. Taylor.

Appendix D

Upon consideration by the panel that decided the appeal, it is Ordered that said petition for rehearing is **DENIED**.

It is further noted that the suggestion for rehearing in banc has been transmitted to the judges for the court in regular active service and to any other judge that heard the appeal and that no such judge has requested that a vote be taken thereon.

FOR THE COURT

GEORGE LANGE III, Clerk

By: s/ Beth J. Meador
Beth J. Meador,
Administrative Attorney